

**REMARKS****A. Status of the Application**

Claims 1-6 were originally submitted in the present application. In the Office Action dated December 6, 2001, the Examiner rejected: claims 1-6 under 35 U.S.C. § 112; claims 1 and 3-6 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,197,015 to Moser; and, claim 2 under 35 U.S.C. § 103(a) as being unpatentable over Moser in view of U.S. Patent No. 4,060,225 to Cunningham and U.S. Patent No. 5,492,401 to Halsted. By this Response, claims 1 and 4 have been amended and Claim 3 and 5 have been cancelled without prejudice to reinstate. Thus, Claims 1, 2, 4 and 6 are at issue.

**B. Rejection Under 35 U.S.C. §112**

Examiner has rejected Claims 1-6 under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. By this response, the claims have been amended to address the Examiner's rejections. In view of the amendments, Applicant respectfully requests Examiner to withdraw the rejection of claims 1-6 under 35 U.S.C. §112.

**C. Rejection Under 35 U.S.C. § 102**

Claims 1 and 3-6 are rejected under 35 U.S.C. § 102(b) as being anticipated by Moser (U.S. Patent No. 4,197,015). Applicant respectfully traverses this rejection.

Claim 1, as amended, calls for a barrel mixer. The barrel mixer comprises a rotary mixer barrel and a support for the rotary mixer barrel. The support comprises a tipping arrangement for the rotary mixer barrel, wherein the support limits tipping of the rotary mixer barrel between a mixing position in which the rotary mixer barrel is angled to retain its contents, and a pouring position in which the rotary mixer barrel is angled so that its contents are poured out. The support also has wheels disposed proximate its bottom portion. The mixer has a motor having a motor output shaft aligned perpendicular to an axis of rotation of the rotary mixer barrel. Finally, the mixer has a transmission mounted on the support for rotating the rotary mixer barrel. The transmission includes step-down gearing between the motor and the rotary mixer barrel. The motor and gearing tip with the rotary mixer barrel when the support is moved between the mixing position

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and the pouring position.

In order for a reference to constitute a §102(b) bar to patentability, the reference must disclose each and every element of the claimed invention. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 771, 218 USPQ 781, 789 (Fed. Cir. 1983). Applicant respectfully submits that Moser does not disclose each and every element of claim 1.

Moser discloses a portable mixing apparatus with a carriage assembly, motor, transmission, and gearing. However, Moser does not disclose a *motor shaft that is aligned perpendicular to the axis of rotation of the rotary mixer barrel* as required by claim 1 of the present invention. Instead, the motor in the mixing apparatus of Moser is connected centrally of the underside of the platform section (19). Moreover, as acknowledged by the Examiner, the motor output shaft (52) is aligned *parallel* to the axis of rotation of the barrel. (See 12/06/01 Office Action, p. 4). Indeed, because of the location of the motor shaft in Moser *could not* be aligned perpendicular to the rotary mixer barrel (See Moser, FIG. 5). Because Moser does not teach this element of claim 1, it is not a proper reference under 35 U.S.C. § 102.

For the foregoing reasons, Applicant respectfully submits that claim 1 recites structure patentably distinguishable from Moser. Claims 3-6 ultimately depend from claim 1 and necessarily include the limitations of claim 1. Accordingly, for the same reasons claim 1 is patentable over Moser, Applicant submits that claims 3-6 are also patentable over Moser.

#### **D. Rejection Under 35 U.S.C. § 103**

The Examiner has rejected claim 2 under 35 U.S.C. §103(a) as being unpatentable over Moser in view of Cunningham (U.S. Patent No. 4,060,225) or Halsted (U.S. Patent No. 5,492,401). Applicant respectfully traverses this rejection.

Claim 2 of the present Application includes all of the limitations of claim 1. Specifically, claim 2 includes the limitation of a motor shaft aligned perpendicular to the rotary mixer barrel rotation axis. As discussed above, Moser does not disclose, teach or suggest this element. Instead, the motor shaft in Moser is aligned parallel to the axis of rotation of the mixer barrel. Thus, the rejection of claim 2 under 35 U.S.C. § 103 is inappropriate in view of the deficiency of the primary reference.

Moreover, neither Cunningham nor Halsted disclose this element of claim 2. Cunningham

discloses a wheelbarrow with a removable mixer in which a mixing unit can be mounted to a wheelbarrow by using a mounting plate and passing the drive shaft of the motor through the mounting plate. Halsted discloses a concrete mixer having a mixing drum of high density material and rigid, wheeled frame which can be effectively towed behind a towing vehicle. However, neither Cunningham nor Halsted discloses, teaches or suggests the limitation of claim 2 requiring a motor shaft aligned perpendicular to the axis of rotation of the rotary mixer barrel.

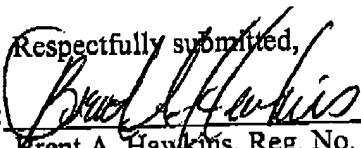
Because neither Moser, Cunningham nor Halsted alone disclose a motor aligned perpendicular to the axis of rotation of the rotary mixer barrel rotation axis the combination of the references also would not disclose this element.

For this additional reason, the rejection of claim 2 under 35 U.S.C. §103 (a) is inappropriate. Applicant, therefore, submits that the Examiner has failed to present a *prima facie* case of obviousness. For the foregoing reasons, Applicant submits that the §103 rejection of Claim 2 has been obviated.

### CONCLUSION

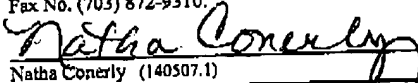
In view of the above Amendments and Remarks, Applicant respectfully submits that claims 1, 2, 4 and 6 are clearly patentable over the cited prior art, and are in condition for allowance. Applicant respectfully requests that the Examiner withdraw the rejections of claims 1, 2, 4 and 6 and enter an allowance of the same. Applicant further invites the Examiner to contact the undersigned attorney to discuss any matters pertaining to the present Application.

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#### CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this document is being facsimile transmitted to Examiner David L. Sorkin, Group Art Unit: 1723, at the United States Patent and Trademark Office on March 4, 2002 to Fax No. (703) 872-9310.

  
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**MARKED UP COPY OF SPECIFICATION AMENDMENTS**

At page 1, paragraph 2, lines 7-10,

-- This is a continuation application of co-pending U.S. Patent Application No. 09/294,215, now U.S. Pat. No. 6,220,744, which is a continuation application of International Patent Application No. PCT/GB97/02840, filed October 15, 1997, and British Application No. 9621632.0, filed October 17, 1996. --

At page 2, paragraph 4, lines 21- 26,

-- There is, of course, no fundamental difference between these types of motors and any other; it is simply a question of design to suit a given purpose. That having been said, the lawn mower motor and the washing machine motor were designed to perform particular tasks and to suit particular pieces of machinery. Conventional general purpose motors with conventional mounts have been the engineers' choice for most other [piece] pieces of equipment. --

At page 4, paragraph 6, lines 17 - 24,

-- In order that the present invention may be more fully understood, it will now be described by way of example, with reference to the accompanying drawings in which:

FIG. 1 is a side elevation of a first embodiment;

FIG. 2 is a rear view on arrow 2 of FIG. 1;

FIG. 3 is a view like FIG. 1 tipped to a mixing position;

FIG. 4 is a view like FIG. 1 tipped to a pouring position;

FIG. 5 is a side elevation of a second embodiment; and

FIG. 6 is a view on arrow 6 of [FIG. 4] FIG. 5. --

At page 5, paragraph 1, lines 1-5,

-- The drawings illustrate barrel mixers 11 comprising a support 12 for a rotary mixer barrel 13. The support 12 includes a tipping arrangement 14 for the barrel 13. The support 12 also supports a motor 15 and transmission 16 for rotating the barrel [12] 13, the transmission 16 including step-down gearing between the motor 15 and the barrel [12] 13, the motor 15 and gearing 17 tipping with the barrel 13.--

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**MARKED UP COPY OF CLAIM AMENDMENTS**

1. (Amended) A barrel mixer comprising:
  - a rotary mixer barrel;
  - a support for [a] the rotary mixer barrel, the support [including] comprising a tipping arrangement for the rotary mixer barrel, wherein the support limits tipping of the rotary mixer barrel between a mixing position in which the rotary mixer barrel is angled so as to retain its contents and a tipping position in which the rotary mixer barrel is angled so that its contents are poured out, the support further [including] comprising wheels disposed proximate a bottom portion of the support;
  - a motor having a motor output shaft aligned [parallel] perpendicular to an axis of rotation of the rotary mixer barrel;
  - a transmission mounted on the support for rotating the rotary mixer barrel, the transmission including step-down gearing between the motor and the rotary mixer barrel, the motor and gearing tipping with the rotary mixer barrel when the support is moved between the mixing position and the pouring position, wherein the motor and transmission are disposed substantially behind the wheels such that the motor and transmission are disposed on the same side of the support; and,
  - wherein the support comprises a resting surface extending in a direction opposite of the rotary mixer barrel and behind the wheels [on the motor and transmission side of the frame] such that when the mixer is in the mixing position the mixer rests upon the resting surface and a foot extends beyond the wheels of the mixer such that when the mixer is in the pouring position the mixer rests upon the foot.
4. (Amended) The mixer of claim 1, wherein [the support is for an engine used to power rotary lawn mowers, and] the motor is an electric motor.